

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**DRAGSTER, LLC**

Webster County, Iowa

ADMINISTRATIVE ORDER

NO. 2011-AFO- 27

TO: Judd Kruse  
712 Arden Street  
Boone, Iowa 50036

Steve Grettenberg, Owner  
Dragster, LLC  
3442 Oak Avenue  
Dayton, Iowa 50530

**I. SUMMARY**

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

Carl Berg, Field Office #2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street S.W.  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Appeal, if any, addressed to:**

Director, Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**Penalty of payment to:**

Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Dragster, LLC is a commercial manure applicator service and is owned by Steve Grettenberg. Mr. Grettenberg took the business over from Raymond Hammer in the winter of 2009.
2. On April 16, 2010, Carl Berg, DNR Field Office 2 environmental specialist, was investigating a complaint at an animal feeding operation owned by Monroe Branstad. During the investigation, Mr. Branstad indicated that Dragster, LLC had applied cattle manure from the facility's deep pit the week before to a field to the south of 300<sup>th</sup> Avenue in Section 24, Madison Township, Hancock County, Iowa. Mr. Branstad indicated there had been a manure spill during this manure application by Dragster, LLC.
3. On April 17, 2010, Mr. Berg contacted Mr. Grettenberg to discuss the manure spill. Mr. Grettenberg explained that it was a minor spill that occurred while the company was pumping from the cattle pits and an o-ring on the umbilical hose split. Mr. Grettenberg indicated that only 20-30 gallons of manure was spilled and that the manure had been contained so as not to be discharged to a water of the state.
4. On April 20, 2010, Mr. Berg contacted Casey Coppi, DNR Licensing Bureau. Mr. Coppi stated that Mr. Grettenberg and other Dragster, LLC employees had let their manure applicator certifications lapse as of March 1, 2010. Mr. Coppi stated that he had not received the certification fees for these individuals or for the company.
5. On April 21, 2010, DNR issued a Notice of Violation letter to Dragster, LLC for failing to report a manure spill within six hours of the spill. The letter required Dragster, LLC to submit a spill report and the manure application records within 30 days.
6. On May 11, 2010, DNR Field Office 2 personnel spoke with Mr. Grettenberg regarding the manure applicators. Mr. Grettenberg stated that he had mailed a check for the certifications. On May 13, 2010, DNR Field Office 2 personnel spoke with DNR Licensing Bureau personnel regarding the certifications. The DNR Licensing Bureau confirmed that the applications and payments for Dragster, LLC and its employees had not been received. The DNR Licensing Bureau confirmed that the employees had taken the certification class in March 2010.
7. On May 26, 2010, Mr. Grettenberg paid the certification fees for Dragster, LLC (Mr. Grettenberg as manager) and three other employees. On May 27, 2010, Mr. Grettenberg presented copies of the certifications to DNR Field Office 2. During the visit, Mr. Grettenberg also completed the spill report.
8. On June 9, 2010, DNR issued a Notice of Violation letter to Dragster, LLC for failing to be properly certified to apply manure and for failing to properly

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certify its employees. The letter stated that the matter was being referred for further enforcement.

9. On March 24, 2004, DNR issued Administrative Order No. 2004-AFO-13 to Mr. Grettenberg for failing to be properly certified to apply manure. The order included an administrative penalty of \$1,000.00. The matter was later resolved with a reduced penalty of \$500.00.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.19(1) states that a commercial manure service, a commercial manure service representative, or a confinement site manure site applicator shall not apply dry or liquid manure to land, unless the person is certified. Dragster, LLC was not properly certified as a commercial manure service at the time of the manure application at Mr. Branstad's facility and the Dragster, LLC employees were not properly certified applicators at the time of the application. The above facts indicate noncompliance with this provision.

3. 567 IAC 65.2(9) states that a person storing, handling, transporting or land applying manure from an animal feeding operation who becomes aware of a release shall notify DNR of the occurrence or release as soon as possible but not later than six hours after onset or discovery of the release. Dragster, LLC was aware that a spill occurred during the April 2010 manure application. Dragster, LLC failed to notify the DNR of the discharge at the time. The above-mentioned facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, the DNR orders Dragster, LLC to do the following:

1. Dragster, LLC shall ensure that all employees are properly certified at all times of manure handling and manure application; and
2. Dragster, LLC shall pay an administrative penalty of \$6,000.00 within 60 days of the date of receipt of this Order, subject to appeal rights stated in Section VII.

**VI. PENALTY**

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

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Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty of \$6,000.00. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit – Dragster, LLC gained an economic benefit over other employers whose employees are certified applicators. Dragster, LLC delayed the payment of the certifications. Therefore, \$50.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle violations administratively at this time, as the most equitable and efficient means of resolving the matter. The certification program is an important component of the regulatory laws relating to animal feeding operation, and failure to comply threatens the integrity of this program. Therefore, \$2,950.00 is assessed for this factor.

Culpability – All commercial manure applicators have a duty to remain knowledgeable of the DNR's requirements. Moreover, the certification requirements have been widely publicized in this industry. As a commercial manure service owner, Mr. Grettenberg is responsible for making sure that his employees follow the certification requirements. Additionally, Mr. Grettenberg has been issued a previous Administrative Order for the same violation. Therefore, \$3,000.00 is assessed for this factor.

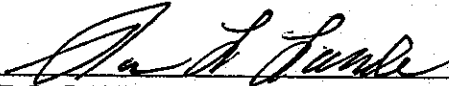
## VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

## VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 2nd day of  
December, 2011.

#1553-CMS; Kelli Book; Field Office 2 (Carl Berg); EPA; VIII.D.4